

# SUPREME COURT OF THE UNITED STATES.

No. 362.—OCTOBER TERM, 1926.

Liggett & Myers Tobacco Company,	}	On Writ of Certiorari to the Court of Claims.
Petitioner,		
<i>vs.</i>		
The United States.		

[May 2, 1927.]

Mr. Justice BUTLER delivered the opinion of the Court.

Plaintiff brought this action to recover a balance claimed for tobacco products obtained from it for the Navy and Marine Corps between September 8, and November 23, 1918. The Court of Claims found the value to be \$483,504.30 and that in the same period the United States paid on account \$423,893.96, and gave judgment for the difference, \$59,610.34, without more. The plaintiff contends that the products were taken under the power of eminent domain and that it is entitled to such additional sum as will produce the equivalent of their value paid at the time of the taking; and that interest at a reasonable rate is the measure of the amount required to be added in order to make just compensation.

The sole question is whether the facts found constitute a taking by eminent domain. Plaintiff was engaged in the manufacture and sale of tobacco products. August 26, 1918, the Bureau of Supplies and Accounts of the Navy issued and delivered to it Navy order N-4128, stating that pursuant to the Act of March 4, 1917 (39 Stat. 1168, 1193) and the Act of June 15, 1917 (40 Stat. 182) and under the direction of the President an order thereby was placed to furnish specified tobacco products for which provisional prices were named; that compliance was obligatory; that no commercial orders should be allowed to interfere with the delivery called for; that, as it was impracticable then to "determine a reasonable and just compensation for the

material to be delivered, the fixing of the price will be subject to later determination. You are assured of a reasonable profit under this order; and as an advance payment you will be paid the unit prices stated hereon, with the understanding that such advance payment will not be considered as having any bearing upon the price to be subsequently fixed. Any difference between the amount of such advance payment and the amount finally determined upon as being just and reasonable will be paid to you or refunded by you, as the case may be." The document stated that the order must be accepted and filled in any event; that it was to be signed and returned by plaintiff; that deliveries were to be made as directed by a designated officer and bills sent to him bearing a certificate that the prices were those stated in the order; and that the conditions appearing on the reverse side of the order were made a part of it. These included printed portions of the above-mentioned Acts of Congress empowering the President in time of war to place an order with any person for war material, of a kind and quantity being produced by him, as the necessities of the Government might require; declaring that "compliance with all such orders shall be obligatory", and that, whenever the United States shall requisition any war material "it shall make just compensation therefor"; and authorizing the President to exercise this power through agencies to be determined by him. September 9, 1918, the Paymaster General of the Navy directed that any orders issued by the Quartermaster General of the Marine Corps should be executed and billed at the prices specified in order N-4128. And, October 14 and November 22 following, the order was further modified so as to call for additional tobacco products. Upon receipt of the order and each of the modifications plaintiff signed a statement thereon that it was "accepted subject to the conditions" specified. The President had authorized the Secretary of the Navy, either directly or through any officer who acting under the Secretary had authority to make contracts on behalf of the Government, to exercise all the power and authority vested in the President applicable to the production, purchase and requisitioning of war material.

Navy order N-4128 did not purport to be an offer to purchase; it commanded delivery of specified merchandise. Plaintiff's consent was not sought; it was not consulted as to quantity, price,

time or place of delivery. The Navy relied upon the compulsory provisions of the Acts of Congress and commanded compliance with the order. These Acts authorized the requisition of plaintiff's property for public use. The President was empowered to take immediate possession of its plant to manufacture the tobacco products called for. Act of June 3, 1916, 39 Stat. 166, 213. And it is to be presumed that the plant would have been taken if plaintiff had refused compliance. The acceptance was not the closing of a contract; it was the expression of purpose to obey. And the order was a continuing one and operated to require delivery of the specified articles whether then on hand or thereafter to be produced.

The findings show that plaintiff's property was taken by eminent domain; and its just compensation includes the additional amount claimed. *Seaboard Air Line Ry. v. United States*, 261 U. S. 299, 304; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 123.

*Judgment reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*